

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CRAIG MENDENHALL §
v. § CIVIL ACTION NO. 5:07cv44
WARDEN JOSEPH WILSON, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON MOTION FOR DEFAULT JUDGMENT

The Plaintiff Craig Mendenhall, proceeding *pro se*, filed this civil rights lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On June 7, 2007, Mendenhall filed a motion asking for a default judgment. He followed this with a motion for a trial setting in light of this default. While these motions were under consideration by the Court, the Defendants filed their answer, on June 25, 2007.

On July 6, 2007, the Magistrate Judge issued a Report recommending that the Plaintiff's motions, for default judgment and a trial setting, be denied. The Magistrate Judge noted that default judgments are severe and should be granted only in extreme circumstances. Although the Defendants' answer was unquestionably untimely, the Magistrate Judge concluded that the case should be resolved on the merits rather than through the vehicle of a default judgment,

Copies of this Report were sent to the parties, but no objections have been received; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the

district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings of the parties and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 19) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for a default judgment (docket no. 10) and motion for trial setting in light of the default (docket no. 12) are hereby DENIED.

SIGNED this 10th day of October, 2007.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE